



W.A(MD)No.1053 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED : 27.07.2023
(Reserved on 13.07.2023)**

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A(MD)No.1053 of 2023
and
C.M.P(MD)No.8010 of 2023**

K.Ayyanar

... Appellant

-VS-

1. The State of Tamil Nadu,
Represented by its Principal Secretary,
Home Department,
Secretariat,
Chennai-600 009.

2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai-8.

3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore,
Chennai-8.

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4. The Director General of Police,
O/o. the Director General of Police,
Tamil Nadu,
Chennai-600 004.

5. The Commissioner of Police,
Madurai City,
Madurai.

... Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent,
against the order dated 22.03.2022 made in W.P(MD)No.14277 of
2021.

For Appellant : Mr.M.Ajmal Khan, Senior Counsel, for
M/s.Ajmal Associates

For Respondents : Mr.Veera Kathiravan
Additional Advocate General assisted by
Mr.D.Sachikumar
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

The above appeal is directed against the dismissal of the writ
petition filed by the appellant in W.P(MD)No.14277 of 2021 dated
22.03.2022.

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2. Brief facts that are necessary for the disposal of the writ appeal are as follows:-

The appellant participated in the process of selection for the post of Sub Inspector of Police, pursuant to the Recruitment Notification No.2/2019 dated 08.03.2019. He was successful in the written examination and he was allowed to participate in the physical verification test and endurance test. However, the appellant's candidature was rejected on the ground that he had suppressed the fact regarding registration of criminal case against him both at the time of submission of online application and at the time of verification. Challenging the non selection, the appellant filed writ petition in W.P(MD)No.14277 of 2021. The fact that the appellant has suppressed his involvement in the criminal case in the online application as well as during verification roll is not in dispute. However, it is contended before the learned Single Judge and before this Court that the criminal case in C.C.No.128 of 2012 ended in acquittal even on 31.03.2015 and that therefore the appellant did not mention his involvement as the appellant bonafidely believed that



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there was no criminal case registered against him was pending at the time of submitting application and police verification.

3. Learned Senior Counsel further contended that non disclosure of the involvement in the criminal case for petty offences or cases that are trivial in nature cannot stand in the way of considering the appellant's candidature. Learned Senior Counsel further submitted that mere suppression is not a ground to reject the appellant's candidature and the 5th respondent ought to have considered the appellant's candidature with reference to the facts of the criminal case, findings in the judgment passed in the criminal case and the suitability of the appellant to the post. Referring to the judgment in the criminal case, learned Senior Counsel submitted that the criminal case pending against the appellant also ended in acquittal on merits.

4. The learned Senior Counsel also relied upon an unreported judgment of this Court dated 05.06.2023 passed in a batch of writ



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appeals. The lead case is W.A(MD)No.938 of 2020 between the Director General of Police and others vs. K.Indhu Kumar, wherein, this Court after referring to several judgments, has summarized the following proposition of law:-

"19. In the light of the above said deliberations, the preposition of law could be summarized as follows:

(a). In case of honourable acquittal, discharge, case closed as mistake of fact, quashing of F.I.R/Charge Sheet before the date of police verification, the same should be considered in favour of the candidate in the current selection itself.

(b).Where the candidate has been acquitted on the ground of benefit of doubt or hostility of witnesses (before the date of police verification), that would not confer any right upon the candidate to claim appointment as a matter of right. It is for the employer to consider the suitability of the candidate based upon his conduct and antecedents only if the offences are trivial in nature.

(c).Where the criminal case has been quashed (before police verification) on the basis of a compromise and the offence is of trivial in nature, the same can be considered in favour of the candidate in the current selection itself. However, if the offence involved is not of a trivial in nature,



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the same cannot be considered for appointment.

(d).Where a candidate having knowledge about his involvement in a criminal case had suppressed the same in his application and the said offence is not trivial in nature, he is not entitled to seek any appointment. On the other hand, in cases of trivial offences, without knowledge about his involvement or after having knowledge had suppressed his involvement, the employer in his discretion is entitled to consider the candidature by considering his character and past antecedents.

(e).Where the candidate is involved in petty/trivial cases like family dispute or dispute with neighbors or shouting of slogans or traffic offence where fine was imposed, the same can be considered to be offence of trivial/petty in nature. However, the offence against women, children or under NDPS Act should never be considered to be an offence of trivial in nature.

(f).Where the candidate is involved in criminal offences under Juvenile Justice Act, he/she is to be considered in the light of the Division Bench Judgment of this Court dated 01.03.2023 in Rev.Appln.No.17 of 2023 in W.A.No.2759 of 2018 (The Superintendent of Police, Villupuram District Vs.S.Rajeshkumar)

(g). Pending the recruitment process, if a candidate is



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discharged from the criminal case or acquitted in the criminal case, he/she shall be eligible to be considered for the next recruitment process as per Rule 14(b) of the Tamil Nadu State Police Subordinate Service Rules."

5. Per contra, learned Additional Advocate General relied upon several precedents which would be discussed in the later paragraphs of this judgment and submitted that the order of the learned Single Judge is perfectly in order and that there is no ground made out to interfere with the said judgment.

6. The facts are not in dispute. In this case, the appellant was charged for the offences under Sections 341, 323, 325 of IPC. Though the charges are for serious offences, the learned Judicial Magistrate No.II, Poonamallee, Chennai, acquitted the appellant while disposing of C.C.No.128 of 2012, by judgment dated 31.03.2015. Paragraph 14 of the judgment of the learned Judicial Magistrate No.II, Poonamallee, is relevant and it reads as follows:-

"14. எனவே, மேலே குறிப்பிட்டுள்ள சங்கதிகளைப் பரிசீலித்துப் பார்க்கையில்,



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அ.சா.1 மருத்துவமனையில் அனுமதிக்கப்பட்ட பின்புதான் மருத்துவமனையில் புகார் வாக்குமூலம் அளித்துள்ளார். புகார் வாக்குமூலத்தில் எதிரிகளின் பெயர்களைக் குறிப்பிட்டு புகார் அளித்திருந்த போதிலும், மருத்துவமனையில் அனுமதிக்கப்பட்டபோது சம்பவமானது ஒயின்ஷாப்பில் நடந்ததாகவோ, தன்னை யார் தாக்கினார்கள் என்பது குறித்தோ, தனக்கு காயங்கள் எவ்வாறு ஏற்பட்டது என்பது குறித்தோ எதுவும் கூறவில்லை. இவ்வழக்கின் புலன் விசாரணை அதிகாரியான அ.சா.7 தான் சொல்லிதான் எதிரிகளின் பெயர்கள் அ.சா.1க்குத் தெரியும் என்று ஒப்புக்கொண்டுள்ளார். அவ்வாறே அ.சா.2 - ம் ஒப்புக்கொண்டுள்ளார். எனவே, சம்பவத்தின்போது தன்னைத் தாக்கியவர்களின் பெயர்கள் இவ்வழக்கின் எதிரிகளின் பெயர்கள்தானா என்பதனை அ.சா.7 - ன் மூலமாக மட்டுமே அ.சா.1 அறிந்துள்ளார். இவ்வழக்கின் புகார் வாக்குமூலத்தின்படி சம்பவமானது அ.சா.1 மற்றும் 2 மதுக் கடையில் மது அருந்திக்கொண்டிருந்தபோது ஏற்பட்ட தகராறின்போது காயங்கள் ஏற்பட்டுள்ளது என்பது தெரிய வருகிறது. அ.சா.1 மற்றும் 2 பிற்பகல் 2.00 மணியிலிருந்து 3.00 மணிவரை மது அருந்திக்கொண்டிருந்ததாக அ.சா.1 ஒப்புக்கொண்டுள்ளார். அ.சா.1ஐ மருத்துவமனைக்கு அழைத்துச்சென்றவரும் மதுக்கடையில் இருந்தவரும், அ.சா.1 - ன் உறவினருமான அ.சா.4 அரசு தரப்பு வழக்கினைச் சார்ந்து சாட்சியம் அளிக்காமல் பிறழ் சாட்சியாகப் பாவிக்கப்பட்டு அரசு தரப்பில் குறுக்கு விசாரணை செய்யப்பட்டுள்ளார். எனவே எதிரிகள் தரப்பு வாதத்தின்படி மது அருந்தியிருந்த அ.சா.1 மற்றும் 2 - க்கு தகராறின்போது காயங்கள் ஏற்பட வாய்ப்புள்ளது என இந்நீதிமன்றம் கருதுகிறது. எனவே சம்பவத்திற்கு முன்பு எதிரிகளைப் பார்க்காத அ.சா.1 மற்றும் 2 சம்பவத்திற்குப் பிறகு முதல் முறையாக நீதிமன்றத்தில் சாட்சியம் அளிக்கும்போது அவர்கள்தான் அ.சா.1 மற்றும் 2 - க்கு காயத்தை விளைவித்தார்கள் என்று சாட்சியம் அளித்திருப்பது இயற்கையாகவும், முழுமையாகவும் நம்பத் தகுந்ததாக அமையவில்லை என்றும், எனவே சந்தேகத்தின் பலனை எதிரிகளுக்கு நல்குவது நீதியின்பால் உகந்தது என இந்நீதிமன்றம் முடிவு செய்கிறது. எனவே, இவ்வழக்கின் அ.சா.1 மற்றும் 2 - க்கு இவ்வழக்கின் எதிரிகள்தான் காயத்தை விளைவித்தார்கள் என்று தீர்மானிக்க முடியாது என முடிவு செய்து இப்பிரச்சனைக்கு விடையளிக்கப்படுகிறது."



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7. It is not in dispute that as per Rule 13 of the Special Rules for Tamil Nadu Police Subordinate Service, a candidate should satisfy the appointing authority that he has not involved in any criminal case before police verification. The appellant has filled up his online application form by marking "No" to the query namely, "Whether any criminal case have been filed against you?". In the police verification roll at Serial Nos.15 and 16, the candidates were requested to answer the queries namely, "Have you ever been concerned in any criminal case as defendant?" and "Have you ever been arrested or convicted and sentenced undergo imprisonment or pay a fine in any criminal or other offence? If so, give details with C.C.No. and Court". The appellant has answered "NIL" for the aforesaid two queries.

8. From the remarks made by the appellant at the time of submitting his online application and thereafter in the police verification roll, it could be seen that the appellant has suppressed his involvement in the criminal case, which of course, ended in his favour by acquittal by giving the benefit of doubt in favour of the appellant.



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The appellant has not only suppressed his involvement in the criminal case, but also failed to establish his suitability.

9. The Full Bench of this Court in **Manikandan and others vs. Chairman, Tamil Nadu Uniformed Services Recruitment Board** reported in **2008 (2) CTC 97**, has considered suppression as fatal in certain cases. The observation of the Full Bench in paragraph 35 of the said judgment reads as follows:-

"Thus the above latest decision of the Apex Court has cleared the cloud of suspicion on the issue. Therefore we hold that the failure of a person to disclose his involvement in a criminal case, at the earliest point of time, when the application form is filled up, is fatal. His subsequent disclosure, whether before acquittal or after acquittal, will not cure the defect. In any case, the subsequent disclosure may not have any effect upon his selection, since his case will then fall under any one of the 2 Explanations under clause (iv) of Rule 14(b) and make him ineligible for the current selection or for all future selection depending on whether the acquittal is honorable or otherwise."



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WEB COPY 10. In **Avtar Singh vs. Union of India** reported in **(2016) 8**

SCC 471, the Hon'ble Supreme Court has observed as follows:-

"32. No doubt about it that once verification form requires certain information to be furnished, declarant is duty bound to furnish it correctly and any suppression of material facts or submitting false information, may by itself lead to termination of his services or cancellation of candidature in an appropriate case. However, in a criminal case incumbent has not been acquitted and case is pending trial, employer may well be justified in not appointing such an incumbent or in terminating the services as conviction ultimately may render him unsuitable for job and employer is not supposed to wait till outcome of criminal case. In such a case non disclosure or submitting false information would assume significance and that by itself may be ground for employer to cancel candidature or to terminate services.

33.

34. No doubt about it that verification of character and antecedents is one of the important criteria to assess suitability and it is open to employer to adjudge antecedents of the incumbent, but ultimate action should be based upon objective criteria on due consideration of all



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35. Suppression of 'material' information presupposes that what is suppressed that 'matters' not every technical or trivial matter. The employer has to act on due consideration of rules/instructions if any in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases."

11. In the case of **Commissioner of Police vs. Raj Kumar in Civil Appeal No.4960 of 2021 dated 25.08.2021**, the Hon'ble Supreme Court has categorically held that the autonomy or the choice of the public employer is greatest and that the process of decision making cannot be interfered with unless the decision is illegal, unfair or lacking bona fides. In the said judgment, it is observed as follows:-

"30. The High Court's approach, evident from its observations about the youth and age of the candidates,



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appears to hint at the general acceptability of behaviour which involves petty crime or misdemeanour. The impugned order indicates a broad view, that such misdemeanour should not be taken seriously, given the age of the youth and the rural setting. This court is of opinion that such generalizations, leading to condonation of the offender's conduct, should not enter the judicial verdict and should be avoided. Certain types of offences, like molestation of women, or trespass and beating up, assault, causing hurt or grievous hurt, (with or without use of weapons), of victims, in rural settings, can also be indicative of caste or hierarchy-based behaviour. Each case is to be scrutinized by the concerned public employer, through its designated officials- more so, in the case of recruitment for the police force, who are under a duty to maintain order, and tackle lawlessness, since their ability to inspire public confidence is a bulwark to society's security."

12. From the rules and the object behind the verification of criminal antecedents, this Court is unable to accept the contention of the learned Senior Counsel appearing for the appellant that the appellant did not suppress any material fact and that his failure to



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disclose the verdict of acquittal in the criminal case is not wilful. The contention of the learned Senior Counsel that the offences alleged against the appellant in the aforesaid criminal case are trivial in nature, also cannot be countenanced. Similarly, the findings of the criminal court in C.C.No.128 of 2012 clearly show that the acquittal was not honourable and that the appellant was discharged from the case only based on the benefit of doubt. Each case is to be scrutinized by the public employer concerned. For the query namely, "whether any criminal case have been filed against you?/உம்மீது ஏதேனும் குற்ற வழக்கு பதிவு செய்யப்பட்டுள்ளதா?", the appellant has answered "No". Therefore, the appellant's candidature was rejected. The order impugned in the writ petition reveals the fact that the appointing authority has considered every factual detail furnished by the appellant and came to the conclusion that the appellant has suppressed the vital information about his criminal antecedents and therefore held that he is not suitable to the post. The operative portion of the order dated 02.08.2021 reads as follows:-

"5. மேலும், தமிழ்நாடு சிறப்புக் காவல் சார்நிலை பணித்தொகுதி விதி எண்.



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14(b)(iv) இன் கீழான விளக்கம் 1ன் படி குற்றம் சாட்டப்பட்டவர் சந்தேகத்தின் பலனை சாதகமாக பெற்றோ அல்லது புகார்தாரர் பிறழ்சாட்சியாக மாறியதாலோ விடுவிக்கப்பட்டால், விண்ணப்பதாரர் குற்ற வழக்கில் சம்மந்தப்பட்டவராகவே கருதப்பட வேண்டும் என அறிவுறுத்தப்பட்டுள்ளது மற்றும் சென்னை உயர்நீதிமன்றம், ரிட் மனு எண்.38296/05இல் 28.02.08 அன்று வழங்கிய தீர்ப்பில் விண்ணப்பதாரர் தனது விண்ணப்பத்தை பூர்த்தி செய்யும் போது தான குற்ற வழக்கில் ஈடுபட்டதையோ அல்லது தன் மீது குற்றவியல் வழக்கு நிலுவையில் இருப்பதையோ மறைப்பது, நியமன அதிகாரி விண்ணப்பதாரரின் மனுவை அவரது உண்மையை மறைக்கும் நோக்கத்தில் செயல்பட்டதை கருத்திற்கொண்டு, அவர் மீதான குற்ற வழக்கின் முடிவை கருத்திற்கொண்டும், அவரது விண்ணப்பத்தை நிராகரிக்கலாம் என ஆணை பிறப்பிக்கப்பட்டுள்ளது.

6. எனவே, மேற்கண்ட நீதிமன்ற ஆணைகள் மற்றும் அரசு விதிகளின் படி குற்ற வழக்கில் சந்தேகத்தின் பலனாக விடுவிக்கப்பட்டதின் அடிப்படையிலும், விண்ணப்பதாரரின் குணநலனும் முந்தைய நடத்தையும் தொடர்பாக கோரப்பட்ட விவரங்கள், விண்ணப்பதாரரால் மறைக்கப்பட்ட நிலையில் (suppression of fact by the petitioner) விண்ணப்பதாரர் நடத்தை திருப்திகரமாக இல்லை என்பதின் அடிப்படையிலும் தங்களை சார்பு ஆய்வாளர் பதவிக்கு பணி நியமனம் செய்ய இயலாது என்ற விவரம் தங்களுக்கு தெரிவிக்கப்படுகிறது."

13. From the facts elaborated in this judgment and the order by which the appellant's candidature was rejected, this Court holds that the non selection of the appellant by the impugned order is perfectly in order and the learned Single Judge has rightly dismissed the writ petition for want of merits.



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WEB COPY 14. The Writ Appeal is, therefore, dismissed. No costs.

Connected miscellaneous petition is closed.

[S.S.S.R, J.] [D.B.C., J.]
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Index : Yes / No
Neutral Citation : Yes / No
bala

To

1. The Principal Secretary,
State of Tamil Nadu,
Home Department,
Secretariat,
Chennai-600 009.

2. The Chairman,
Tamil Nadu Uniformed Services Recruitment Board,
Old Commissioner of Police Office Campus,
Egmore, Chennai-8.

3. The Member Secretary,
Tamil Nadu Uniformed Services Recruitment Board,
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Egmore, Chennai-8.

4. The Director General of Police,
O/o. the Director General of Police,
Tamil Nadu,
Chennai-600 004.

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5. The Commissioner of Police,
Madurai City,
Madurai.



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S.S.SUNDAR, J.
and
D.BHARATHA CHAKRAVARTHY, J.

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PRE-DELIVERY JUDGMENT MADE IN
W.A(MD)No.1053 of 2023
DATED : 27.07.2023